

*In re* Minnesota State Court Guidant Corp. Implantable Defibrillator  
Product Liability Litigation, C4-06-6672

August 14, 2006 (9:00 a.m.) Scheduling Conference Minutes

Spokespeople:

Mr. C. Messerly, Plaintiff Spokesperson

Mr. T. Pratt, Defense Spokesperson

I. Treatment of Personal Injury and Third Party Payer Claims.

- a. Justice Anderson's order gives Judge Leary jurisdiction over both kinds of claims.
- b. There are 25 personal injury cases and 2 third party payer cases (UnitedHealth Care & Blue Cross).
- c. Whether there is any legal merit to the third party payer claims is an issue derivative to the personal injury claims.
- d. A separate track for third party payer cases would pose the problem of a duplicative course of discovery.
- e. For reasons (c) and (d), no party wants these cases consolidated within the MDL meaning of consolidation.
- f. All parties recognize the dissimilarities between the two kinds of cases, thus seek "coordination" as opposed to "consolidation." Separate issues separate, common issues coordinated.
- g. Consensus: Avoid traditional MDL process while recognizing that some of MDL's efficiencies will expedite the process of litigation. Keep files together in one "master" file.

II. Management of Discovery and Motion Practice

- a. Master Pleadings: The parties decided there was no need for master pleadings.
- b. Special Master: The parties decided there was no need for a special master. Should the need arise, Judge Leary will select Special Master from short list provided by parties.
- c. Appointment of Liaison Counsel:

Ms. Gale Pearson was nominated and accepted the position of Liaison Counsel. How she will be compensated for her work has not yet been determined.

- d. Discovery Requests: All discovery requests will be served upon Ms. Pearson, who will then forward the request to the appropriate law firm, which will then designate a representative and notify Ms. Pearson. Defense counsel will then contact Ms. Pearson to find out who needs to be contacted.
- e. Protective Order: All parties recognize the need for a protective order giving parties access to Guidant documents and depositions. Will meet and confer.
- f. Preservation Order: All parties recognize the need for a preservation order giving parties access to Guidant documents and depositions. Will meet and confer.
- g. Deposition Protocol: Parties will set time limits and accommodations for depositions. Parties will cross-reference any deposition scheduled with the MDL. Will meet and confer. Judge Leary will resolve any disputes.
- h. Electronic Filing: Parties agree that electronic filing is unnecessary.
- i. Fixed, Periodic Status Conferences: Will follow the MDL periodic status conference usually held the third Wednesday of every month. May be necessary bi-monthly in early stages, less often in later stages. Telephone hearings or conferences OK.
- j. Pro Hoc Vice: Should be filed in consolidated file.
- k. Timetable: Plaintiff thinks first cases can be tried in May 2007, Defense thinks this is too ambitious, wants to try one case at a time.

III. Judge Leary will issue an order after parties meet and confer w/ regard to:

- 1. Appointment / compensation of liaison.
- 2. Management of discovery and motion practice.
  - a. Protective Order
  - b. Preservation Order

3. Allowing discovery by plaintiffs beyond what is available in MDL?
  4. Taking depositions – provide some protocol to avoid producing too often, but still letting Ps adequately prepare for depositions meaningfully.
  5. Service of orders on certain individuals identified in court.
  6. Confidentiality.
  7. Getting complaints answered.
- IV. Parties will meet and confer, submit agreement by letter no later than 4:30 p.m. on August 28, 2006. If unable to agree, separate letters OK.
- V. Judge Leary will issue minutes of status conferences held to be posted on website.
- VI. Parties are to personally appear before Judge Leary on Thursday, September 21, 2006 at 9:00 a.m. If there is no need for this scheduling conference, the parties will notify the Court by 4:30 p.m. on Monday, September 18, 2006.